**HON'BLE SRI JUSTICE P.S. NARAYANA**

**Writ Petition No.24717 of 2006**

**Date: 27th November, 2006**

Between :-

P. Beebi Jan, W/o. Imam Hussain .. Petitioner

And

The State of Andhra Pradesh
Panchayat Raj Department,
Secretariat, Saifabad, Hyderabad
Rep. by Principal Secretary and 5 others .. Respondents

**HON'BLE SRI JUSTICE P.S. NARAYANA**

**Writ Petition No.24717 of 2006**

**ORDER:-**

1. The matter is coming up for *admission.*

2. The learned G.P. for Panchayat Raj takes notice on behalf of R.1. Sri V.V.Prabhakar Rao takes notice on behalf of R.2, R.3 and R.4. Sri Vedula Venkata Ramana takes notice on behalf of R.6.

3. The Writ Petition is filed for a Writ of Mandamus or other appropriate order or direction in the nature of Writ directing the respondents to re-notify the Election Programme to continue the process of election of Sarpanch of Piler Gram Panchayat, Chittoor District, after restoring the candidature of the petitioner for the post of Sarpanch of the said Gram Panchayat and after declaring the action of the respondents in re-notifying the Election Programme by Notification dated 21-11-2006 bearing No.1792/SEC-B-2/2006, which excluded the candidature of the petitioner from the said post as arbitrary, illegal without jurisdiction and violative of A.P. Panchayat Raj (Conduct of Election) Rules 1994 in the interest of justice and to pass such other suitable orders.

4. Sri B.Nalin Kumar, the learned Counsel representing the writ petitioner had taken this Court

through the averments made in the affidavit filed in support of the Writ Petition and would maintain that even as per the prior proceedings issued by the State Election Commission, it is clear that the writ petitioner had not in-person withdrawn her nomination and when that being so, the same is contrary to Rule 14 of the Rules relating to A.P. Panchayat Raj (Conduct of Elections of Members and Sarpanch of Gram Panchayats, Members of Mandal Parishads and Members of Zilla Parishads) Rules, 2006, G.O.Ms.No.No.142 Panchayat Raj and Rural Development (Elections) Department, dt.3-5-2006. The learned Counsel also would contend that in the prior Writ Petitions, W.P.No.16344/2006 and 17404/2006, this Court had considered only such cases of unopposed candidates and hence the present writ petitioner stands on a different footing. The learned Counsel also would comment that the prior Writ Petition W.P.No.16343/2006 was allowed to be closed by the writ petitioner under peculiar circumstances as they existed as on the said day and in the light of the subsequent events, the petitioner is left with no other option except invoking the jurisdiction of this Court, especially in the light of the clear contravention of Rule 14 referred to supra, as well reflected from the records.

5. Sri V.V.S.Prabhakar Rao, the learned Counsel

representing respondents 2 to 4 would contend that it is no doubt true that at a particular stage, the State Election Commission was of the opinion that an Expert Opinion to be called for but however in the light of the view expressed by this Court in W.P. No.16344/2006 and 17404/2006, the State Election Commission is left with no other option except to further proceed with the election in accordance with law. The learned Counsel also would submit that even otherwise the fact whether there was withdrawal in person by the petitioner or not, predominantly the same being a question of fact, at this stage the Writ Court cannot go into the said question and hence the appropriate remedy available to the petitioner is by way of Election Petition.

6. Sri Vedula Venkata Ramana, the learned Counsel representing R.6 would contend that nothing prevented the writ petitioner to see that the prior Writ Petition No.16343/2006 to be kept pending and in the light of the relief prayed for in the prior Writ Petition, may be having confidence in the State Election Commission at that time, the same was permitted to be closed and in the light of the prior order made in Writ Petition No.16343/2006, the present Writ Petition cannot be maintained since the self-same ground is raised again in the present Writ Petition.

At any rate, the Counsel would submit inasmuch as the acceptance of nomination or rejection of nomination on the ground of withdrawal or otherwise being an intermediary stage in the process of election, normally the Writ Court is not expected to interfere at this stage unless the election process is taken to its logical end and the remedy, if any, available to the petitioner is elsewhere definitely but not by way of present Writ Petition.

7. Heard the Counsel on record.

8. The facts involved in this Writ Petition appear to be a bit peculiar. Relating to the self-same ground, when certain complaints had been received from Chittoor District, certain of the non-opposed candidates approached this Court by way of Writ Petitions W.P. Nos.16344 and 17404 of 2006 and this Court by order dt.2-11-2006 allowed the said Writ Petitions. This Court specifically observed that *it is needless to say that when the candidates had been democratically elected unopposed, they should not be prevented from assuming their respective offices unless and otherwise such election is set aside by a competent Election Tribunal.*

9. It is stated that the 2nd respondent issued a notification dated 9-7-2006 specifying for conduct of elections to various Gram Panchayats in the State. It is

also stated that in pursuance of the same, the 3rd respondent issued a notification in the District on 14-7-2006 as per which nominations are to be received between 15-7-2006 to 19-7-2006. It is also stated that the date of scrutiny, objections and appeal were fixed on 20-7-2006, 21-7-2006 and 22-7-2006. It is further stated that 23-7-2006 was fixed as the date for withdrawal of nominations and the elections were to be held on 6-8-2006. It is also stated that the petitioner filed her nomination as an independent candidate for the post of Sarpanch and her nomination was accepted after scrutiny which had taken place on 20-7-2006 and there were no objections or appeals against her nomination. It is also further stated that while things stood thus, on 23-7-2006 the 4th respondent displayed a list at 10.00 a.m., in the Notice board of his office, which was removed at 10.30 a.m., by the 4th respondent himself on the same day and according to the said list, it is stated that the petitioner's candidature was shown as withdrawn even though she did not withdraw her nomination. It is also stated that the petitioner came to know that some forged form was given by somebody through the office of the 4th respondent in her name purporting to state that the petitioner had withdrawn her candidature which is not correct. It is

further stated that immediately on 25-7-2006 the petitioner approached the Sub-Collector, Piler, Chittoor District by making a written representation dated 24-7-2006 but he did not take any action and the petitioner also made a written representation dated 1-8-2006 to the 2nd respondent bringing to his notice that she did not withdraw her candidature and that it was the result of forgery. It was also further stated that the petitioner filed Writ Petition No.16343/2006 questioning the action of official respondents in purporting to accept the withdrawal which was a forgery and the said Writ Petition came up on 4-8-2006. It may be appropriate to have a look at the order made in Writ Petition W.P. No.16343/2006 which reads as hereunder:-

> *"The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondents in accepting the withdrawal form of the petitioner, which was admittedly forged by some body through the office staff of the 4th respondent and declaring that the election of the Sarpanch of the Piler Major Gram Panchayat was unopposed as illegal, unjust, arbitrary, capricious, high handed action, colorable exercise of power and contrary to the various provisions contained in part IX of the Constitution, apart from contrary to various provisions of the A.P. Panchayat Raj Act, 1994 and the Rules thereunder and consequently set*

*aside the action of the respondents in declaring him as withdrawn from the contest to the office of the Sarpanch of the Piler Major Gram Panchayat and pass such other suitable orders.*

*In the light of the representation made by the learned Counsel that the State Election Commission already had stayed the declaration of result, the same is hereby recorded and in view of the same, it is stated that no further orders need be passed.*

*Accordingly, the Writ Petition is closed. No order as to costs."*

It is also further stated that on 4-8-2006 when the Writ Petition came up, it was represented that the 2nd respondent already had stayed the declaration of the result and in view of the same, the said representation was recorded and the said Writ Petition was closed. Subsequent thereto, the 2nd respondent issued proceedings dated 21-11-2006 purporting to re-notify the Election Programme to continue the process of elections of Sarpanch and Ward Members of Piler Gram Panchayat from the stage at which it was stopped i.e., after publication of final list of contesting candidates. It is also stated that the effect of this notification dated 21-11-2006 would be that the petitioner's candidature would be excluded as a contestant for the post of Sarpanch. The specific stand of the petitioner is that she had never

submitted any form seeking withdrawal of her candidature and that she did not hand over in-person any such form of withdrawal of her candidature and also she did not authorize anybody to withdraw her candidature. It is further stated that as per Rule 10 of A.P. Panchayat Raj (Conduct of Elections) Rules, 1994 a candidate may withdraw his candidature by notice in written form that is signed by him/her personally delivered by him to the Election Officer. It is further stated that in the present case, the petitioner did not sign Form No.6, much less delivered it personally to the Election Officer and in fact the 3rd respondent in his letter to the 2nd respondent stated that insofar as the petitioner is concerned, the withdrawal forms were delivered by the proposal who was not authorized for the purpose. It is also further stated that purporting to accept withdrawal of the petitioner's nomination is absolutely arbitrary, illegal and contrary to Rules. It is further stated that at the time of disposal of earlier Writ Petition W.P.No.16343/2006 the 2nd respondent reported that the declaration of the result had already been stayed thereby meaning that action will be taken to restore the petitioner's candidature. Further it is stated that contrary to the same, the petitioner's candidature is excluded and election program is notified

from the date of publication of final list of contesting candidates which is absolutely arbitrary, discriminatory and without jurisdiction.

10. It may be appropriate to have a look at notification dt.21-11-2006 in No.1792/SEC-B2/2006 issued by the 2nd respondent – the State Election Commission and the same reads as hereunder:-

*STATE ELECTION COMMISSION*

*3rd Floor, Budha Bhavan, M.G.Road, Secunderabad – 500003*

*NOTIFICATION*

*No.1792/SEC-B2/2006*

*Dated:21.11.2006*

*WHEREAS the State Election Commission in its order No.1792/SEC-B2/2006-2, dated 3.8.2006 suspended the election process to the office of Sarpanch of Piler Gram Panchayat of Piler Mandal after publication of final list of contesting candidates on the allegations of forgery of signature of a validly nominated candidate in the notice of withdrawal;*

*AND WHEREAS the State Election Commission in order No.1792/SEC-B2/2006-4, dated 4.8.2006 postponed further election process of Ward Members of Piler Gram Panchayat after publication of final list of contesting candidates due to law and order problem and the RO concerned had given effect to the order.*

*AND WHEREAS a W.P. No.17404 of 2006 was filed in the Hon'ble High Court challenging the orders dated 3.8.2006 of the SEC and the Hon'ble High Court allowed the said W.P. with the result the orders issued in the reference 1792/SEC-B2/2006-2, dated 3.8.2006 became ineffective.*

*AND WHEREAS, Rule 7 of the A.P. Panchayat Raj (Conduct of Elections) Rules, 2006, stipulates that*

*where the election process is interrupted or the election programme has to be altered on account of the orders of any Court of law or for other reasons to be recorded in writing, it shall be competent for the State Election Commission either generally or in respect of specified Gram Panchayat to alter the election programme notified under sub-rule (2) of rule 4 and re-notify the election programme as it deems fit in the circumstances of the case without having regard to the guidelines mentioned in sub-rule (3) of rule 4 and the Returning Officer shall be effect to the same.*

*AND WHEREAS, after careful consideration of the matter decided to renotify the election programme to the offices of Sarpanch and Ward Members of the Piler Gram Panchayat from the stage at which it was stopped i.e., after publication of final list of contesting candidates under rule 7 of the said rules;*

*NOW THEREFORE, in exercise of the powers conferred under Article 243-K of the Constitution of India and rule 7 of the A.P. Panchayat Raj (Conduct of Elections) Rules, 2006, the State Election Commission, hereby, renotifies the following election programme to continue the process of elections of Sarpanch and Ward Members of Piler Gram Panchayat and Mandal from the stage at which it was stopped i.e., after publication of final list of contesting candidates.*

*<u>Election programme</u>*

*1. Date of Poll : 28.11.2006*
*(for both Sarpanch and (from 7.00 AM to 1.00 PM)*
*Ward Members of all Wards)*

*2. Date of counting of votes : 28.11.2006*
*(from 2.00 PM onwards)*

*3. Declaration of results : soon after the completion of*

*counting of votes*

*4. (a) Date of conduct of election : On the same date on*

*Of Upa-Sarpanch under which results are*

*Section 14(1) of APPR declared*

*Act, 1994*

*(b) If for any reason, the election of Upa-Sarpanch is not held on the date aforesaid, it shall be held on the next day, whether or not it is a holiday observed by the Gram Panchayat*

*The Returning Officer shall give effect to the above election programme and intimate the same to all the contesting candidates for the office of Sarpanch and Ward Members of Piler Gram Panchayat.*

*Dr. A V S Reddy,*

*State Election Commission*

Rule 14 of the aforesaid Rules reads as hereunder:-

***Withdrawal of candidate:-*** *(1) Any candidate may withdraw his candidature by notice in writing in Form-VII signed by him and delivered to the Returning Officer by such candidate in person at any time after the presentation of his nomination paper and not later than 3-O' Clock in the afternoon of the third day succeeding that appointed for scrutiny of the nominations whether or not it is a public holiday. Where such notice is not delivered by such candidate in person, it shall be delivered by his proposer or election agent who has been authorized in this behalf in writing by such candidate. The Returning Officer shall give a receipt for the same as provided in Form-*

*VII on being satisfied as to the genuineness of the notice of withdrawal and the identity of the candidate.*

*(2) The Returning Officer on receiving a notice of withdrawal under sub-rule (1) shall, as soon as may be, cause a notice of the withdrawal to be published in Form-VIII.*

*(3) A candidate, who has withdrawn his candidature under sub-rule (1) shall not be allowed to cancel the withdrawal.*

It is no doubt true that Rule 14 referred to supra mandates a particular procedure to be followed. It is needless to say that predominantly this is a question of fact. Even otherwise in the light of the orders already made by this Court, the 2nd respondent thought it fit to further proceed with the further election programme. Hence, viewed from any angle, this Court is of the considered opinion that the remedy of the writ petitioner is elsewhere and not by invoking the jurisdiction of this Court under Article 226 of the Constitution of India. In view of the same, the Writ Petition is bound to fail and accordingly, the Writ Petition shall stand dismissed. No order as to costs.

Justice P.S.Narayana

Dt. 27-11-2006

smr